Supreme Court, U.S.
FILED
FEB 18 1997
CLERK

No. 96-1221

In The

# Supreme Court of the United States

October Term, 1996

LAWRENCE WM. JORDAN,

*Petitioner,*

vs.

THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

*Respondent.*

**On Petition For A Writ Of Certiorari To The California Supreme Court**

## RESPONDENT THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT'S BRIEF IN OPPOSITION

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## I. INTRODUCTION

Petitioner LAWRENCE WM. JORDAN (hereinafter "JORDAN") was dismissed from his faculty position by Respondent GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT (hereinafter "DISTRICT") because his continuing sexual harassment of a faculty colleague, despite a series of warnings and disciplinary suspensions, constituted under California law unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing said harassment.

Petitioner simply seeks to redress a perceived wrong affecting JORDAN and no other person. JORDAN's dismissal from his teaching position has been reviewed and upheld (1) by the administrative law judge; (2) by the trial court exercising its independent judgment; and (3) by the Court of Appeal, which affirmed the trial court's Order and found "sufficient evidence to support JORDAN's dismissal and no lapse of due process," while noting that JORDAN "is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon." Appellate Decision, App. 2-3, 11.

In his Petition JORDAN alleges mere error by the State Court of Appeal rather than asserting with any merit that this case implicates a broad institutional review for uniformity of decisions. Here review by this Court is not necessary to decide any important legal question. Moreover, Petitioner fails to identify any issue which is pending review by this Court in any other case. No public policy questions are raised in the instant Petition. There are no matters which significantly affect the

administration of justice. Nor does Petitioner identify any purported conflict among federal circuit decisions or state courts of last resort. In sum, JORDAN's Petition for Writ of Certiorari fails to establish the requisite grounds deserving of Supreme Court review. Therefore, the Petition should be denied.

Respondent DISTRICT respectfully requests that this Court deny the Petition for Writ of Certiorari which seeks review of the California Supreme Court's denial of review of an unpublished state Court of Appeal decision upholding the dismissal of Petitioner JORDAN from his faculty position.

## II. STATEMENT OF THE CASE

Petitioner JORDAN was dismissed for (1) evident unfitness of duty (Education Code § 87732(e)) and (2) persistent violation of or refusal to obey applicable state laws and community college regulations. Education Code § 87732(g).[1] In essence, this case is based on Respondent DISTRICT's decision to terminate Petitioner JORDAN from his teaching position after his continued refusal to refrain from contacting a female faculty colleague who had complained of harassment by JORDAN.

The underlying facts show that (1) college instructor JORDAN continued to contact a female faculty colleague and to seek confidential information about her for over a four-year period, despite repeatedly being directed by both her and the DISTRICT times to desist from said

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[1] Due to a non-substantive statutory amendment, now renumbered as (d) and (f).

contacts; (2) after numerous warnings to desist from contacting his faculty colleague, including two disciplinary suspensions without pay of four (4) and ten (10) days respectively,[2] the DISTRICT dismissed Jordan in the face of his continuing intransigent conduct; (3) during the full administrative hearing requested by JORDAN, he admitted the conduct and acknowledged that he had continued to contact his colleague despite the DISTRICT's warnings to desist; and (4) the administrative law judge found that JORDAN's actions were sufficiently severe or pervasive to create a hostile work environment for the faculty colleague; that JORDAN's conduct rendered him evidently unfit for service pursuant to Education Code § 87732(d), and that he had persistently violated applicable laws and community college regulations. Education Code § 87732(f).

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[2] The state Superior Court subsequently ruled that the suspensions were procedurally infirm, as they had been based on provisions of the collective bargaining agreement rather than the Education Code. However, the California Court of Appeal concluded that the suspensions were not found to be invalid:

> Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. *But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.* [Emphasis added.] Court of Appeal Decision, App. 11, n.3.

*Proceedings Below*

Subsequent to Petitioner's dismissal from his faculty position by DISTRICT, he requested, and was provided, a full administrative hearing on the matter. DISTRICT's dismissal decision was upheld by an administrative law judge. JORDAN then petitioned for a writ of mandamus to compel reversal of that decision. A California Superior Court denied the petition after reviewing the administrative record.

JORDAN then filed an appeal with the state Court of Appeal. On June 24, 1996, that Court affirmed the lower court's order denying the petition, finding sufficient evidence to support JORDAN's dismissal and that he had been afforded all requisite due process. *See* Court of Appeal Decision in Appendix.

A petition for rehearing was denied by the Court of Appeal on July 19, 1996. On October 2, 1996, the California Supreme Court denied JORDAN's petition for review.

Respondent notes that prior to institution of dismissal proceedings, JORDAN had also previously challenged the disciplinary suspensions in federal court. Based on the same set of operative facts as the instant matter, the court dismissed JORDAN's constitutional and civil rights claims challenging his pre-dismissal disciplinary suspensions, both as to their procedural and substantive validity. On November 22, 1993, the federal court granted DISTRICT's motion to dismiss, concluding that "Plaintiff's First Amendment Claim is Meritless" and that he had failed to state a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*

Additionally, subsequent to his dismissal, JORDAN filed a civil action based on the identical set of operative facts. On December 31, 1996, summary judgment was granted in favor of Respondent DISTRICT based on principles of collateral estoppel and *res judicata* arising from both the state Court of Appeal decision upholding JORDAN's dismissal and the prior federal court ruling granting the motion to dismiss. *See* Superior Court decision in Appendix.

In yet another related case, JORDAN has unsuccessfully sued the DISTRICT's attorneys for claims based on his dismissal proceedings, again *on the same set of operative facts* as the case at bar.[3] JORDAN's civil complaint filed in Superior Court, dated February 2, 1996, was held to be subject to demurrer without leave to amend.

## III. STATEMENT OF FACTS

Appellant JORDAN was initially employed by DISTRICT in Fall 1989. Prior to his dismissal, JORDAN was a full-time instructor. After making the acquaintance of another faculty employee, Janene Frahm, JORDAN was informed by both Ms. Frahm, and subsequently by DISTRICT, to cease any contact with Ms. Frahm. Despite this knowledge, JORDAN proceeded to continue contacting Ms. Frahm and to seek identifying information about her.

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[3] JORDAN asserted the following causes of action: (1) Deceit; (2) Negligent Misrepresentation of Fact; (3) Malicious Institution of Civil Proceeding; and (4) Malicious Instigation of Administrative Proceedings.

JORDAN admitted on the Administrative Record that he had indeed engaged in the unwanted conduct for which he had been disciplined and ultimately terminated.

DISTRICT determined that Ms. Frahm's allegations of sexual harassment were credible and required remedial action; therefore, pursuant to its authority under the applicable collective bargaining agreement, it instituted progressive discipline. Despite specific and repeated written warnings to JORDAN over a four-year period that he was violating the agreement's discrimination and harassment provisions, JORDAN refused to cease contacting Ms. Frahm, and his progressive discipline eventually resulted in an action for dismissal.

JORDAN was served on September 8, 1994 with a Notice of Decision To Dismiss, which included the Statement of Decision To Dismiss, the Declaration of Dr. James Middleton regarding the Statement of Decision To Dismiss, the Recommendation for Statement of Decision To Dismiss, the Statement of Charges, the Resolution of Dismissal, a Notice of Objection form, copies of required sections from the Education and Government Codes, a copy of Board Policy 5.0004 and Education Code §§ 200, *et seq.*, a copy of the collective bargaining agreement, and a copy of JORDAN's March 1993 evaluation.

JORDAN then filed his signed Notice of Objection to Decision, dated September 21, 1994, and also submitted a four-page Notice of Objection and Demand for Hearing in which he responded to each charge.

Despite receiving his dismissal notice, JORDAN nevertheless subsequently sent an empty envelope marked "Do not forward" to Frahm in order to ascertain her

home address. DISTRICT then filed and served an Amended Statement of Decision on November 23, 1994 to include the charge that after receiving the initial dismissal documents, JORDAN again had contacted Frahm.

At the request of JORDAN and as authorized by Education Code § 87678, the matter was referred to the California Office of Administrative Hearings.

A hearing was set and held on February 22 and 23, 1995 in the City of San Rafael, California.

The hearing proceeded and the record was left open for the submission of closing briefs. After conclusion of the hearing, JORDAN requested permission to submit additional evidence into the record, to which DISTRICT lodged an objection. A determination to deny JORDAN's request was made on that issue by the administrative law judge on April 17, 1995. The administrative law judge then issued his final determination on the amended charges on June 7, 1995, finding that cause existed for dismissal of JORDAN.

In conjunction with JORDAN's initial action to overturn the dismissal, JORDAN sought action to stay implementation of the administrative law judge's decision. An order denying the Motion To Stay was issued on August 16, 1995. JORDAN then appealed the trial court's order upholding the administrative law judge's decision supporting JORDAN's dismissal from his teaching position.

## IV. OBJECTIONS TO MISSTATEMENTS IN PETITION

Respondent herein identifies misstatements in the instant Petition and lodges a general objection to each

question presented in that Petitioner raises issues more properly to be matters of California law which do not implicate federal statutes or the Constitution:

> (1) Question No. 3 in terms of a purported communication to the press by the college president was never challenged in the dismissal proceedings below.
>
> (2) Questions Nos. 6, 7 and 14 are inaccurate in that Petitioner received copies of all relevant documents related to his dismissal.
>
> (3) Question No. 11 is inaccurate in that Petitioner was not dismissed for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, or for Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*

## V. ARGUMENT

### A. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED GIVEN THAT IT FAILS TO RAISE COMPELLING ISSUES OF FEDERAL LAW AND IT DOES NOT IDENTIFY ANY CONFLICT WITH DECISIONS BY OTHER COURTS.

#### 1. Petitioner Fails To Identify Any California Statute Repugnant to the Constitution or Law of the United States.

28 U.S.C. § 1257(a) provides for Supreme Court jurisdiction by writ of certiorari over final judgments rendered by the highest court of a state where, *inter alia*, "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. . . . "

Supreme Court Rule 10 provides considerations governing review on certiorari:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The instant Petition does not (1) decide any important constitutional questions; (2) interpret any federal statutes; or (3) require resolution for the purpose of maintaining harmony among the decisions of the Circuit Court of Appeals or with state court interpretations of federal questions.

Here Petitioner has failed to identify any California statute which is constitutionally infirm or otherwise

unlawful. In essence, JORDAN's allegations simply assert that Respondent, the administrative law judge, the Superior Court and the Court of Appeal *misapplied* otherwise valid state statutes.

Moreover, there is no substantial claim that federal law would require a result different from that reached by the state courts. Further, here the state court decision does not involve an important federal question showing a conflict with this Court's prior decisions, a federal court of appeals, or the highest court of another state.

Therefore, Petitioner's writ seeking review by the Supreme Court should be denied.

**2. Petitioner Fails To Identify Any Conflict with Any Prior Decision of This Court or Any Unsettled Areas of the Law.**

Petitioner has not cited any authority showing that the administrative law judge, the state Superior Court, or the state Court of Appeal made any decision conflicting with prior decisions of this Court. Any allegation as to infringement of JORDAN's rights is fatally defective given well-settled constitutional principles. His continued attempt to vindicate his rights throughout the California and federal courts have been unavailing because his procedural and substantive rights have been safeguarded through the administrative hearing and judicial review. The state Court of Appeal recognized that JORDAN had received a hearing consistent with statutory and constitutional principles. Petitioner fails to show that the Court of Appeal decision is inconsistent with established legal principles or case law. Therefore, no grounds

based upon a conflict in decisions or an unsettled area of the law exist for granting the Petition.

### 3. The Facts Presented Are Unique to Petitioner and Fail To Implicate Any Principles of General Application.

JORDAN's Petition relies on facts unique to Petitioner. There are no identifiable principles of general application which potentially affect other litigants. Petitioner has been afforded numerous opportunities in administrative and judicial fora to vindicate his alleged rights. JORDAN's arguments, reiterated in his Petition, have heretofore been consistently rejected upon judicial review.

## B. THERE ARE NO GROUNDS RAISED IN THE PETITION WHICH ARE APPROPRIATE FOR REVIEW BY THE SUPREME COURT.

This Brief in Opposition does not purport to address the merits of Petitioner's arguments; rather, its foci are limited to the narrow question of whether certiorari should be granted. It is Respondent's view that for the following reasons the instant Petition fails to satisfy the prerequisites for granting certiorari.

*Here JORDAN simply repeats his legal challenge to his discipline and ultimate dismissal in his arguments to Superior Court, to the Court of Appeal, to the California Supreme Court, and now again to this Court.* Each and every court to date has rejected JORDAN's assertions that the substantive basis for his discipline, and ultimate dismissal, were

in any way infirm. The substance of each and every allegation raised by JORDAN in his Petition for Writ of Certiorari has been heard, and rejected by the administrative law judge, by a California Superior Court on a mandamus petition, by the Court of Appeal, by the California Supreme Court, by a federal court, and most recently by another state Superior Court in his civil suit.

JORDAN elected to challenge the administrative law judge's decision upholding DISTRICT's termination decision. Ultimately, the Court of Appeal affirmed the lower court's order denying JORDAN's petition for writ of mandate, finding sufficient evidence to support Petitioner's dismissal and no lapse of due process. *See* Appendix. The Court found that substantial evidence supported the finding that JORDAN had engaged in sexual harassment, persistently refused to obey rules proscribing such conduct, and was unfit for service as an instructor. As noted by the Court,

> Jordan explained that he believed his constitutional right of free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end," the end being to establish his constitutional right of free expression.

Appellate Opinion, App. 9.

> The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve

> that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.
>
> These findings are supported by the weight of the evidence, as described in detail above. . . . Appellate Opinion, App. 9.

The Court of Appeal, in its carefully crafted opinion, also disposed of JORDAN's complaint of lack of a performance evaluation by concluding that JORDAN had not explained the presence of the 1993 evaluation as evidence in the administrative hearing and that in any event his "teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm." Appellate Opinion, App. 12-13.

JORDAN further alleged a consistent breach by Respondent of its procedural due process obligations. Of import to the instant Petition is the Court of Appeal's rejection of Petitioner's allegations of due process infringement:

> The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance from censure to increasing periods of suspension. [Footnote.] Jordan remained intransigent, and the District's governing board resolved to dismiss him on September 8, 1994

> upon the superintendent's recommendation following yet another complaint of harassment from Frahm.
>
> Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. [Citation omitted.] Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment. . . . "

Appellate Opinion, App. 12-[illegible].

JORDAN also challenged the procedural vehicle which DISTRICT had initially used in disciplining him for sexual harassment. However, the Court of Appeal also disposed of this issue, as explained in the Opinion at App. 11, n.3:

> Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. *But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not less their effect in notifying Jordan of the inappropriateness of his conduct.* [Emphasis added.]

In sum, the Court of Appeal found no merit in JORDAN's alleged deprivation of procedural rights and protections:

"We are satisfied that due process was afforded Jordan." Opinion, App. 11.

Therefore, JORDAN's allegations as to procedural due process violations and tort allegations regarding his discipline and ultimate dismissal have been fully litigated in several fora. This result was recognized by the Superior Court when it granted summary judgment in Petitioner's civil suit based on the principles of collateral estoppel and *res judicata*. *See* App. 17.

## VI. CONCLUSION

Upon the reasons as set forth above, Respondent THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT respectfully urges that this Petition for Writ of Certiorari be denied.

Dated: February 17, 1997

Respectfully submitted,

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# APPENDIX

California Education Code §87731:

> No regular employee shall be dismissed except for one or more of the following causes:
>
> . . .
>
> (d) Evident unfitness for service.
>
> . . .
>
> (f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.
>
> . . .

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

LAWRENCE WM. JORDAN,

Plaintiff and Appellant

v.

THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

Defendant and Respondent.

A072322

(Marin County Super.Ct.No. 164356)

Lawrence W. Jordan was dismissed from his faculty position with the College of Marin (College) by the Marin Community College District (District) because his sexual harassment of a fellow instructor constituted unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing harassment. (Ed.Code, § 87732, subds. (e) and (g) [now, subds. (d) and (f)].)[1] The District's decision was upheld by Administrative Law Judge Stewart A. Judson, after a full hearing on the matter. Jordan petitioned for a writ of mandate to compel reversal of the decision and the superior court denied the petition after reviewing the administrative record. On appeal, we affirm the lower court's order denying the

[1] All further statutory references are to the Education Code, unless otherwise indicated.

petition, finding sufficient evidence to support Jordan's dismissal and no lapse of due process.

## I. DISCUSSION

Our review of the trial court's denial of Jordan's petition for administrative mandate is limited to determining whether substantial evidence supports the trial court's findings, which it reached through its independent review of the evidence admitted at the administrative hearing. (*O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610, 1620; § 87682.) As a preliminary matter, Jordan denies that the trial court ever made an independent review of the administrative hearing evidence. But the trial court expressly stated that it reviewed all documents submitted to it, including the administrative record, and exercised its "independent judgment" in finding the evidence sufficient to support Jordan's dismissal. The trial court did not itself articulate specific findings but it effectively adopted the findings of the administrative law judge which, we too, find to be supported by the evidence.

### A. Substantial Evidence Supports the Finding That Jordan Engaged in Sexual Harassment, Persistently Refused to Obey Rules Proscribing Such Conduct, and was Unfit for Service as an Instructor.

California prohibits sexual harassment in employment and educational institutions, declaring it a form of sexual discrimination. (§§ 200, 212.5, 212.6, 230, subd. (d); Gov.Code, § 12940, subd. (h)(1).) Federal law also forbids

sexual harassment. (42 U.S.C. § 2000e-2, subd. (a)(1); *Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 63-67.) The collective bargaining agreement between the District and its instructors likewise prohibits sexual harassment. Consistent with these legislative edicts and its union obligations, the District has an express policy prohibiting its employees from sexually harassing students or fellow employees, so as to prevent "an adverse or offensive working or academic environment." The administrative law judge found that Jordan sexually harassed Janene Frahm, a fellow employee, and that Jordan's conduct was "sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm." The evidence supports that finding.

1. Evidence presented at the administrative hearing.

Jordan is a former lawyer and joinded the College faculty as an engineering and science instructor in 1989. Frahm is a speech communications instructor. She was a temporary, periodic employee of the College, and worked there during numerous semesters from 1981 to 1982 and 1986 to 1993, and had employee status through 1994.

Jordan and Frahm met in the fall of 1989 and dated once by attending an open house party together.[2] Soon after the party, Frahm wrote a note to Jordan saying she

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[2] As did the administrative law judge, we mention early events to provide a background while respecting the rule precluding reliance on "charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." (§ 87680.)

did not want any further involvement with him. Jordan did not accept the rebuff but instead wrote to Frahm's alma mater in April 1990, attempting to get personal information about her. Frahm learned of the attempt and expressed her displeasure to Jordan. She also complained to the College of Jordan's behavior and the College asked him to leave Frahm alone.

Ignoring the request, Jordan sat in on a class Frahm was teaching in the summer of 1990, and asked the registrar about enrolling in the class. Jordan also mailed a Valentine's Day card to Frahm's post office box in February 1991, professing his love for her. Jordan further ignored Frahm's and the College's pleas that he not contact her by sending June birthday cards to her every year from 1991 to 1994. Frahm had never told Jordan her birthday, only that it was in the latter part of June, and had never given Jordan her mailing or home address.

The birthday messages began in July 1991, when Jordan sent a postcard of New Zealand caves to Frahm's post office box, mailed from California, with the handwritten greeting "Belated Happy Birthday. Hope you find who/what you want in life." Frahm was upset to receive the unwelcome contact and informed the College. The College formally censured Jordan for sexual harassment and warned him that further communications with Frahm would be punished with suspension from teaching. Frahm's sexual harassment complaints were reported in local newspapers in October 1991 when Jordan was running for the College Board of Trustees.

Jordan sued the College over its disciplinary finding and wrote to Frahm in January 1991, asking her to contact

him to arrange her deposition. Jordan mailed letters both to Frahm's post office box and to her street address. Frahm was "scared" and "extremely upset" to realize that Jordan had "somehow tracked down" her home address. She cried and shook upon receiving Jordan's letter at home, and worried about how he obtained the information and whether he had learned other personal information about her. She "felt stalked" and "harassed," and was concerned about her "safety and well being." She asked the College teachers' union for help.

In June 1992, Jordan mailed a postcard to Frahm's home address, depicting a bob cat and inscribed "happy birthday." Frahm was upset at receiving another unwelcome communication from Jordan and notified the College. The College suspended Jordan without pay for four days, and warned him that further harassment of Frahm would result in a longer suspension.

In June 1993, Jordan mailed a birthday card to Frahm's home address. The card shows a smiling person and reads "Whatever makes you smile most . . . is what I hope you'll do today. Happy Birthday!" As with the other cards, it was signed "Larry." Frahm was "angry," "upset," "scared" and "worried" by Jordan's recurrent contacts at her undisclosed home address. She felt it "very spooky" that Jordan "was out there tracking down information about [her]." Frahm again notified the College and Jordan was again disciplined. This time, Jordan was suspended for 10 days without pay.

In December 1993, the College sought an injunction against Jordan and submitted Frahm's declaration attesting that she had altered her life because of Jordan's

unwanted contacts. She stated that she "ceased attending college sponsored functions because [she did] not want to be in the same room as him" and "had to be careful not to reveal information to third parties" because she feared Jordan would learn the information.

In June 1994, Jordan mailed yet another birthday card to Frahm's home address. The card, posted in Utah, bears a "Love" postage stamp. It depicts seven images on the cover, including a rainbow, balloons, and hearts, each corresponding to the phrases "Success," "Love," "Joy," "Happiness," "Friendship," "Smiles," and "Health." The printed sentiment reads "Many wishes to you for a truly memorable year. Happy Birthday," and is inscribed "Thanks for your assistance. Larry." Frahm thought it a strange note and had no idea what "assistance" Jordan meant. Frahm was "sick and tired of unwanted contact from a person who has been told time and time again to leave [her] alone and [she] wanted it to end." She notified the College of the latest card from Jordan, and the District decided to dismiss Jordan upon its superintendent's recommendation. Jordan was notified of that decision on September 8, 1994.

Meanwhile, Frahm moved from her home where she had been receiving birthday cards from Jordan. Frahm believes that Jordan "somehow" found out about her move and tried to "track [her] down" and discover her new address. On September 13, 1994, he mailed an empty envelope to her previous address and marked it "DO NOT FORWARD. Address correction requested." Frahm sought, and obtained, a court order closing her voter registration records to prevent Jordan from learning her new address.

Frahm testified that she felt that her safety "is threatened now on a continual, regular basis." She characterized Jordan's conduct as sexual harassment and explained that it affected her work environment at the College. She was hesitant to attend faculty meetings at the College, and missed some, because Jordan would stare at her. In order to attend a two-day meeting in which Jordan was known to be participating, Frahm was accompanied the entire time by a male administrator who acted as a "body guard." While on campus, Frahm felt that she had to constantly look over her shoulder to make sure Jordan was not following her. She described an incident during the summer semester of 1993 when she jumped behind a tree and ran from car to car to avoid confronting Jordan who was walking nearby. Frahm also described Jordan's habit of walking past her open office door, even though his office was in another building across campus.

A College administrator testified that Jordan's conduct upset Frahm and made Frahm reluctant to come to campus. The administrator also said that Jordan's conduct was intimidating, hostile and disruptive of "the educational process." The District superintendent testified that the District felt an obligation to maintain a comfortable, open environment on campus and a legal responsibility to prevent sexual harassment. An expert on sexual harassment testified that sexual harassment is present if the harassment is based on the victim's gender, even if not provocatively sensual in nature. The expert also said that conduct outside the work place may constitute sexual harassment in employment if the offensive conduct is related or linked to the work place.

At the hearing, Jordan admitted acquiring Frahm's street address from voter registration records and making recurrent, unwelcome contacts to Frahm for four years, over the District's pleas to stop. He also admitted knowing, beginning in 1990, that Frahm was complaining about his conduct to the College and that, at least by 1991, she thought him "a pain in the butt." Jordan explained that he believed his constitutional right of free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end;" the end being to establish his constitutional right of free expression.

2. The evidence supports the findings of sexual harassment, persistent refusal to obey applicable rules, and unfitness for service.

The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had long been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.

These findings are supported by the weight of the evidence, as described in detail above. Jordan harassed

Frahm by a persistent refusal to respect her requests to be let alone, ferreting out her street address from government records and intruding into every birthday for four years with unwelcome cards. The harassment was sexual harassment, since Jordan initiated it when Frahm refused to date him again and inaugurated his communications with a Valentine's Day card professing his love for her. The first birthday card, too, bears an obvious reference to Frahm's rebuff with its stated wish that Frahm "find who/what you want in life." It is true that the birthday cards were facially innocent. But "[s]exual harassment does not necessarily involve sexual conduct. It need not have anything to do with lewd acts, double entendres or sexual advances." (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 345.) Clearly, Jordan does not behave similarly in commemorating the birthdays of his male colleagues. The administrative law judge rightly concluded that the obsessiveness and intrusiveness of Jordan's fixation on this birthday card campaign reasonably intimidated Frahm.

While the cards were not delivered at the work place, there was sufficient evidence that Jordan's conduct in staring at Frahm at faculty meetings and roving past her office extended to the campus and the entire "concerted pattern" of his conduct created an offensive work environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610.) Jordan's conduct is not absolved by the fact that he did not limit his activities to campus. A work place sexual harasser's wrongful conduct is not mitigated by encroachments into the victim's private life.

Finally, Jordan's claim that the District is without authority to discipline sexual harassment is plainly

wrong. An employer apprised of sexual harassment among its employees must "take immediate and appropriate corrective action," and "all reasonable steps to prevent harassment from occurring." (Gov.Code § 12940, subd. (h)(1).) Jordan ignored the District's numerous directives to stop his harassing conduct, thus establishing a persistent refusal to obey applicable laws and regulations. (§ 87732, subd. (g) [now, subd. (f)].) Jordan's obstinate and offensive conduct also evidenced unfitness for service. (§ 87732, subd. (e) [now subd. d]; see *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 [factors generally relevant to unfitness].)

B. There was No Deprivation of Due Process.

In addition to challenging the sufficiency of the evidence supporting his dismissal, Jordan also claims he was denied various procedural rights and protections. We are satisfied that due process was afforded Jordan.

1. Notification of dismissal decision.

The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance from censure to increasing periods of suspension.[3] Jordan remained intransigent, and the

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[3] Jordan had challenged the suspensions as violative of certain Education Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. But the suspensions were not found invalid and, in any event, any

District's governing board resolved to dismiss him on September 8, 1994, upon the superintendent's recommendation following yet another complaint of harassment from Frahm.

Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. (§ 87672.) Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment of Frahm and explained that his conduct constituted "evident unfitness for service" and "persistent violation of or refusal to obey" school laws of the state and District board regulations, both of which provide grounds for dismissing tenured faculty. (§ 87732, subs. (e) and (g) [now subds. (d) and (f)].)

2. Performance evaluation.

Jordan complains that the District board dismissed him without first evaluating his teaching competency. It is true that the Education Code provides for dismissal upon satisfaction of certain grounds, including the District's board's consideration of a performance evaluation. (§ 87671.) However, it is not clear that the board

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procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.

neglected to consider an evaluation of Jordan's performance. A February 1993 performance evaluation was presented with other documents at the administrative hearing to establish that the District proceeded lawfully, so it may be that the evaluation was presented to the District board before it resolved to dismiss Jordan. Jordan has not proven to the contrary on appeal, and has failed to explain the presence of the evaluation in the record. In any event, Jordan's teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm.

3. Notification of administrative hearing.

The District honored Jordan's request for an administrative hearing to dispute his dismissal and advised him in November 1994 that a hearing was set for February 21-23, 1995 in San Rafael. The District personally served Jordan with a second notice on February 16, 1995, changing the hearing location to a different San Rafael office. Jordan argues that notice was inadequate because administrative procedures require that all parties receive notice of the hearing "at least 10 days prior to the hearing." (Gov.Code § 11509.) The argument fails because Jordan received the original notice almost three months before the hearing and the amended notice served five days before the hearing changed only the location of the hearing within San Rafael.

While administrative procedures mandate at least 10 days advance notice of the hearing to apprise all parties of the date, time, place, and nature of the proceedings, it

is not clear that a minor change in the place of the hearing requires an equivalent period of advance notice. (Gov.Code § 11509.) We have held that a continuance of an administrative hearing to be held in a different city does not require satisfaction of the statutory notification standard, and found it sufficient that the interested party was informed at an administrative board meeting in Los Angeles that the matter was continued until a later Sacramento board meeting and had actual knowledge of the precise date at least three days before the hearing. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 711-712, 715.) Here, Jordan was formally notified of the date, time, place and nature of the administrative hearing well in advance and only the place was changed shortly before the hearing. The change in location was minor, from one office to another within the same city, and Jordan had actual knowledge of the change five days before the hearing. Jordan appeared at the hearing and made no claim there, or here, that he suffered any prejudice by the change of location. On these facts, we find no deprivation of due process or the intended protections of the administrative rule.

4. Discovery.

Finally, Jordan says he was denied discovery opportunities. California community college employees in administrative proceedings have discovery "rights and duties" equivalent to civil action litigants in addition to discovery rights granted under administrative procedures. (§ 87679; Gov.Code § 11507.6.) Jordan availed himself of his civil discovery rights by propounding interrogatories, a request for admissions and a request for

production of documents by mail service on December 24, 1994. Second requests for production of documents and admissions were served by mail on January 5, 1995. A response to the first request for production of documents was due January 18, 1995, a response to the second request for admissions was due February 9, 1995, and the other three discovery responses were due January 30, 1995. (Code Civ.Proc. §§ 1013, subd. (a), 2030, subd. (h), 2031, subd. (h), 2033, subd. (h).)

Jordan also requested discovery under administrative procedures on December 24, 1994. (Gov.Code § 11507.6.) That request was untimely since it was not made within 30 days after service of the District's statement of charges mailed on September 8, 1994, nor within 15 days after service of the District's amended statements of charges mailed on November 23, 1994. (Gov.Code § 11507.6.) Accordingly, no response was due to that request for discovery.

On January 30, 1995, Jordan petitioned the superior court to compel the District to respond to all outstanding discovery requests.[4] Since only one of the five properly propounded discovery requests was due for response before January 30, 1995, Jordan's petition was largely premature. Also, Jordan made no attempt to resolve the discovery problem by conferring with the District, as local court rules encourage. (Marin County Superior Court Rules. Rule 3.14(A).) A discovery hearing was set for February 16, 1995. The District responded to all civil

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[4] Jordan failed to present his requests for admissions to the trial court when he petitioned to compel discovery responses. (Code Civ.Proc. § 2033.)

discovery requests before the hearing. Responses were mailed on February 10, 1995, and received by Jordan three days later. The District opposed Jordan's effort to compel discovery or impose sanctions, explaining that it had failed to respond earlier because it's [sic] counsel had not realized that community college employees were entitled to civil discovery in addition to administrative discovery. The trial court found that the District fully complied with its discovery obligations by the time of the hearing.

The trial court's resolution of the discovery dispute was proper. The court was entitled to excuse the District's belated discovery responses and the delay in response worked no prejudice upon Jordan. He received the District's responses sufficiently in advance of the administrative hearing, and discovery was completed "prior to one week before the date set for hearing." (§ 87679.) Jordan was given all due process.

## II. DISPOSITION

The order denying a petition for writ of administrative mandate is affirmed.

Strankman, P.J.

We concur:

Dossee, J.

Swager, J.

**MARIN COUNTY COURTS**

DATE: 12/31/96 TIME: 9:00 A.M.
DEPT. NO. 7 CASE NO. 166230

PRESENT: HON. LYNN DURYEE, JUDGE

REPORTER: DEBBIE BARTUNEK CLERK: LOUISE MORRIS

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PLAINTIFF: LAWRENCE WM. JORDAN COUNSEL:

vs.

DEFENDANT: MARIN COMMUNITY COLLEGE DISTRICT GOVERNING BOARD

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NATURE OF PROCEEDINGS: MOTION FOR SUMMARY JUDGMENT

RULING

Defendants' [sic] moving papers failed to provide an evidence document with an index to exhibits in violation of Marin County Rule 3.13(S)(2)(a)-(e), for which a $49.00 sanction is hereby imposed, payable to the Clerk of the Court within five days of the hearing date.

Defendants' [sic] unopposed request for judicial notice of the seven items listed is granted. The parties are also advised that the Court intends to take judical notice pursuant to Evidence Code §§ 455 and452, of the pleadings (Second Amended Petition for Writ of Mandate) in Marin No. 164356.

Defendants' [sic] Motion for Summary Judgment is GRANTED. The Court has reviewed and considered all of

the evidence presented, including those matters identified for purposes of judicial notice, and finds that all of Plaintiff's causes of action in the operative Second Amended Complaint are barred by the principles of *res judicata* and *collateral estoppel*. (See *Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893; *Swartzendruber v. City of San Diego* (1992) 3 Cal.App.4th 896[,] see also *Takahashi v. Board of Trustees of Livingston* (9th Circ. 1986) 783 F.2d 848 and *Miller v. County of Santa Cruz* (9th Cir. 1994) 39 F.3d 1030) The primary right at stake in the prior administrative mandamus action (Marin No. 164356) was plaintiff's right to employment; the prior federal action challenged the impropriety of District's disciplinary action; both actions were decided adversely to Plaintiff. The Court of Appeals decision concerning Plaintiff's termination clearly addressed the claims made here. Plaintiff has merely re-cast his allegations concerning the impropriety of Defendants' [sic] conduct with regard to his discipline and ultimate dismissal under the guise of different "theories" (e.g. conspiracy, fraud, deceit, infliction of emotional distress, etc.).

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